IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R.No. 5940 of 2006 (O&M)
Date of decision : 10.11.2006.

Hushiar Singh

.....Petitioner.

Versus

Amir Singh & Ors.

.....Respondents.

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr. N.S. Sodhi,Advocate
for the petitioner.

****

VINOD K. SHARMA,J.(ORAL)

The present revision petition has been filed against the orders passed by the learned Courts below dismissing the application moved by the petitioner under Order 39 Rule 1 & 2 read with section 151 C.P.C.

The petitioner had filed a suit for declaration claiming himself to be owner in possession of the property and filed an application for temporary injunction under Order 39 Rules 1 & 2 read with Section 151 of the Code of Civil Procedure.

The application was contested by the respondents on the plea that the plaintiff-petitioner had appeared before the Sub Registrar and got executed a sale deed dated 30.11.1992 in favour of defendant Nos.1 and 2 after receiving full and final payment of the sale price. The sale deed was not challenged for a period of 12 years. The defendant No.1 thereafter had sold his share in favour of defendants No. 3 & 4, who hold the land as owners in possession.

The learned Courts below on consideration of documents placed on record came to the conclusion that presently Amir Singh, Khushal Singh sons of Waryam Singh i.e. the defendants No. 1 & 2 were shown to be in cultivating possession of the land in dispute whereas the land is shown to be under the ownership of Dona Singh. It was also noticed that in pursuance to the sale by the plaintiff mutation No. 385 was also sanctioned in favour of Amir Singh and Khushal Singh defendants. Thereafter mutation has been sanctioned in favour of defendants No. 3 & 4. Thus, the learned Courts below came to the conclusion that prima facie the petitioner is neither owner nor in possession of the property in dispute so as to claim injunction and dismissed the application.

The learned counsel for the petitioner vehemently contended that the petitioner has challenged the sale deed alleged to have been executed by him and, therefore, the application ought to have been allowed as the matter regarding sale by him was yet to be adjudicated.

The contention of the learned counsel for the petitioner cannot be accepted as the Courts below in deciding application under order 39 Rules 1 & 2 read with Sections 151 C.P.C. have to form a prima facie opinion on the basis of available documents as to whether the petitioner has prima facie case and to see if the balance of convenience in his favour and further that irreparable loss would be caused to him in case injunction is not granted.

In the present case, it would be seen that the documentary evidence placed on record showed that the petitioner was neither owner nor in possession of the property and, therefore, neither had a prima facie case in his favour nor the balance of convenience was in favour of the petitioner.

In view of the facts stated above, it could not be said that any irreparable loss would be caused to the petitioner in case injunction was not allowed. Therefore, the learned Courts below were right in dismissing the application moved by the petitioner under Order 39 Rules 1 & 2 read with Section 151 C.P.C.

There is no illegality or error in the impugned order which may call for interference by this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

Dismissed.

However, nothing stated above should be construed as opinion on merit by this Court.

November 10,2006 **(VINOD K. SHARMA)**
'sp' **JUDGE**